IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 92 OF 2007

Shri Santosh Humraskar,
Major of age,
Resident of Junta Quarters, D-6,
Angod, Mapusa-Goa. ..... Petitioners

V e r s u s

1. State
   Through Public Prosecutor,
   High Court of Bombay
   at Panaji.

2. Shri Subhash B. S. Jetha,
   major of age,
   Resident of Junta House,
   D-5, Mapusa, Goa. ..... Respondents

Mr. J. P. Mulgaonkar, Advocate for the Appellant.

Ms. Winnie Coutinho, Public Prosecutor for the State/Respondent no.1.

Mr. V. Shirodkar, Advocate for Respondent no.2.

CORAM: N. A. BRITTO, J.

DATE: 4th May, 2007.

ORAL JUDGMENT

Heard Shri Mulgaonkar, the learned Counsel on behalf of the petitioner and Shri B. Shirodkar, the learned Counsel on behalf of respondent no.2.

2. In this petition, filed under Section 482 of the Code of Criminal Procedure, 1973, (Code, for short), the petitioner against whom proceedings under Section 107 of the Code were initiated, assails the Order dated 21.02.2007, of the learned Assistant Sessions Judge, upholding the Order 12.09.2006 of the learned Sub-Division Magistrate, Mapusa, by which, the learned SDM has refused to drop the proceedings pursuant to an application filed by the petitioner dated 12.09.2006, contending that the proceedings ought to have been dropped after the expiry of six months, in terms of sub-division (6) of Section 116 of the Code, which reads as follows:

> "The inquiry under this Section shall be completed within a period of six months from the date of its commencement and if such inquiry is not so concluded, the proceedings under this Chapter shall, on the expiry of the said date, stand terminated unless, for special reasons to be recorded in writing, the Magistrate otherwise directs:

3. Some brief facts are required to be stated to dispose of this petition.

4. The SDM, after receipt of a report from the Police, had issued an Order under Section 111 of the Code and the petitioner, as opponent in the said proceedings, appeared before the SDM on 21.02.2006 and sought

time to file a reply. The petitioner filed his reply on 28.02.2006 and the proceedings were then adjourned to 04.04.2006 and on that day, an Order was passed, summoning the Police Officer for his examination on 20.06.2006. However, it so happened that on this day, i.e. 20.06.2006, the SDM was not sitting and on the subsequent date i.e. 22.08.2006, oral submission was made for the purpose of dropping the proceedings and at the next hearing, i.e. on 12.09.2006, a written application for the same purpose was filed on behalf of the petitioner which came to be dismissed on the same date.

5. A revision filed against that Order also came to be dismissed.

6. As per Shri Mulgaonkar, the learned Counsel on behalf of the petitioner, the period of six months contemplated by sub-section (6) of Section 117 had to be reckoned from 21.02.2006 or 28.02.2006 and if the same was so reckoned from the said dates, then the SDM, had no other option but to drop the proceedings on the expiry of six months from the said date. In support of the said submission, Shri Mulgaonkar, has placed reliance on the decision of Orissa High Court in the case of ***Bhagaban Pradhan & ors. v. Jayaram Mohanty & Ors. (1995 Cri. L.J. 607)***, and that of this Court in the case of ***Smt. Christalin Costa & Ors. v. State of Goa & Ors. (1992 Cr.L.J. 3608)***. Learned Advocate Shri Mulgaonkar has also submitted that the period of six months had to be reckoned from the day

when the party proceeded against puts up his appearance and the Magistrate cannot, at his own volition, extend the period of inquiry by sheer inaction or by functioning in a perfunctory manner and by giving long and unnecessary adjournments, since this could be against the letter and spirit of this salutary provision. In this context, Shri Mulgaonkar placed reliance on the case of ***J.C. Mehta v. State (1982 Cr.L.J. 1488)***.

7. On the other hand, Shri Shirodkar, contending that the period of six months had to be reckoned from 20.06.2006 that being the date fixed by the SDM for conducting the inquiry, as contemplated by sub-section (1) of Section 116 of the Code has placed reliance on the decision of Kerala High Court in the case of ***Mathewkutty & anr. v. State of Kerala (1995 Cr.L.J. 3293)***, and also on a later decision of the Orissa High Court in the case of ***Bipra Charan Mohanty v. Basanta Kumar Mohanty (1996 Cr.L.J. 2982)***.

8. The purpose behind enacting Section 107 of the Code, has been set out by the Apex Court in another case of ***Madhu Limaye v. Sub Divisional Magistrate, Monghyr & ors (AIR 1971 SC 2486).*** As stated by the Supreme Court in the aforesaid decision, Section 107 of the Code enables certain specified classes of Magistrates to make an order calling upon a person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not

exceeding one year as the Magistrate thinks fit to fix. The condition of taking action is that the Magistrate is informed and he is of opinion that there is sufficient ground for proceeding that a person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. The section is aimed at persons, who cause a reasonable apprehension of conduct likely to lead to a breach of the peace or disturbance of the public tranquility. This is an instance of preventive justice which the courts are intended to administer. This provision like the preceding ones is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and the public tranquility. For this purpose Magistrates are invested with large judicial discretionary plowers for the preservation of public peace and order. Therefore the justification for such provisions is claimed by the State to be in the function of the State which embraces not only the punishment of offenders but, as far as possible, the prevention of offences.

9. Section 111 of the Code deals with the order to be made by a Magistrate while initiating proceedings under Section 107 of the Code and Section 112 deals with the procedure in respect of the person who is present in Court . Section 113 of the Code deals with the procedure as regards the person who is not present in Court and in case of such a person, the Magistrate is required to issue summons requiring him to

appear, or, in such a case the person is in custody, a warrant directing the officer in whose custody he is to bring him before the court . Section 114 requires that the copy of the order made should be sent along with the summons or warrant.

10. Sub-section 1 of Section 116 of the Code provides that when an order under Section 111 has been read or explained under Section 112 to a person in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or a warrant, issued under Section 113, the Magistrate shall proceed to inquire into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary. In terms of sub-section (2) of Section 116 of the Code, such inquiry is to be made in the manner prescribed for conducting trial and recording evidence in summons-cases.

11. So the question is when does the inquiry under Sub-section (1) of Section 116 of the Code really commence? The views were not free from conflict but now there appears to be preponderance of judicial opinion in support of the view that the inquiry commences on the date when the person against whom the proceedings are taken appears or his presence is secured and files a reply contesting the show cause notice. This is the stage at which the Magistrate decides to hold the inquiry and then fixes the date for recording the evidence. This also appears to be the view held by a

Division Bench of this Court in the case of ***Dwarkanath Ramchandra Angachekar & ors. v. The State of Maharashtra & anr. (1977 Cri. L. J. 120)***.

12. In the case of ***Bhagaban Pradhan & ors. v. Jayaram Mohanty & ors (1995 Cri. L.J. 607)*** Justice A. Pasayat of Orissa High Court, (as His Lordship then was) held that the real stage of commencement of the inquiry comes after the show cause has been filed and thereafter the Magistrate decides to proceed to inquire into the truth of the information. That stage as far as this case is concerned took place on 28.02.2006 when the petitioner had filed his reply. It is also stated that the real stage of commencement of inquiry comes after the show cause has been filed and thereafter the Magistrate decides to proceed to inquire into the truth of information. It is also stated that the inquiry commences when the Magistrate attempts in a legal way to put the allegations to test, for finding out whether they are the facts. This decision was rendered after referring to the case of ***Madhu Limaye & anr. v. Ved Murti & ors. (AIR 1971 SC 2481)*** which decision has also been followed by most of the other High Courts. As to when an inquiry would commence is a question which was not dealt with by this Court in the case of ***Smt. Christalin Costa & ors. v. State of Goa & ors.*** (supra) relied upon on behlaf of the Petitioner.

13. In the case of ***Mathewkutty & anr. v. State of Kerala & anr.***

(supra), the Kerala High Court after referring to several other decisions including that of a Full Bench of Patna High Court in ***Sitaram Singh v. State of Bihar (AIR 1980 Pat. 257),*** as well as the Full Bench decision of the Orissa High Court in ***Sona Khan v. State(1981 Cr.L.J. 39)*** concluded in para 13 that the inquiry commences as soon as the opposite party in proceedings under Section 107 challenges the allegations made against him or refuses to admit the same or submits a show cause petition against the allegations or the Magistrate otherwise has reason to proceed or decide to ascertain the truth of the allegations made by the opposite party by taking evidence or otherwise, and, thereby agreed with a view expressed by the Full Bench of the Orissa High Court whose view was followed by Gujarat High Court in ***Motilal Jivanbhai Patel v. Jesangbhai Nagjibhai Patel and Ors. (1988 Cr.L.J. 255)*** and Calcutta High Court in ***Paresh Chandra Hati v. Ahitosh Panda (1978 Cr.L.J. 1171).*** It may be noted that the Full Bench of the Patna High Court to which reference was made in ***Sitaram Singh v. State of Bihar*** (supra) has held that the inquiry commences on the very day the party noticed appears in Court. The full bench of Orissa High Court in ***Sona Khan v. State (1981 Cr.L.J. 39),*** held that the commencement of the inquiry starts when the Magistrate attempts in a legal way to put the allegations to test for finding whether they are the facts.

14. In ***Bipra Charan Mohanty v. Basanta Kumar Mohanty (1996 Cr.L.J. 2982)***, the Orissa High Court agreed with a view held by the Hon'ble

A. Pasayat in ***Bhagaban Pradhan & ors. v. Jayaram Mohanty & ors.*** (supra), and that of the Full Bench of the same High Court in ***Sona Khan v. State*** (supra), and held that commencement of inquiry starts as soon as the delinquent files show cause, further observing that a similar view was taken by the Calcutta High Court in the case of ***Paresh Chandra Hati v. Ahitosh Panda (1978 Cr.L.J. 1171)*** (supra).

15. The Division Bench of this Court in ***Dwarkanath Ramchandra Angachekar & ors. v. The State of Maharashtra & anr.*** (supra), after referring to the provisions of Section 112 as well as 116 of the Code held that, *irrespective of the fact whether the Magistrate records the plea of the opponent or not, and irrespective of the fact whether the Magistrate proceeds with the inquiry or not, the inquiry in the proceedings must be deemed to have commenced against such a person on the very day when his presence is thus secured on the day fixed by the Court* i.e. and as far as the case at hand is concerned, on 28.02.2006, when the petitioner filed a reply contesting the Order made against him. This is the view which this Court is bound to follow irrespective of the fact that otherwise also, that appears to be the view which is widely accepted as already indicated. Viewed, thus the six months period had already expired on the date the application to drop the proceedings was filed.

16. However, the case of the petitioner cannot be allowed to end at

that. To reiterate, sub-section (6) of Section 116, inter alia, provides that, on the expiry of the period of six months, from the commencement of the inquiry, the proceedings would stand terminated unless for special reasons to be recorded in writing, the Magistrate directs otherwise. This is a case where the learned SDM in his wisdom, and for reasons recorded, has chosen to continue the proceedings and that is because pursuant to further complaints the police had submitted a supplementary report dated 30.06.2006 and the informant also had filed further complaints dated 03.07.2006 as well as 17.08.2006, as can be seen from the Order of the learned SDM dated 12.09.2006. Shri Mulgaonkar, has referred to an observation of this Court in ***Smt. Christalin Costa & ors. v. State of Goa & ors.*** (supra), wherein this Court observed that the extension of time had to be directed by the Magistrate before the expiry of six months period and not after its expiry. The said casual observation was made in a case where there was nothing on record to show that the Magistrate had in his wisdom thought fit to extend the period of inquiry which he was supposed to hold under Section 116 of the Code. A bare reading of sub-section (6) of Section 116 of the Code, indicates that the proceedings would stand automatically terminated at the expiry of six months from the date of commencement of inquiry unless for special reasons to be recorded in writing, the Magistrate otherwise directs. In other words, in the case at hand, for special reasons recorded and which are otherwise not assailed, the learned Magistrate has chosen to extend the inquiry, which he was

conducting, beyond the period of six months. There is nothing in sub-section (6) to indicate that special reasons for continuation of the inquiry are required to be recorded prior to the expiration of six months from the date of commencement. That could not be the interpretation of Sub-section (6) of Section 116 of the Code. There can be no occasion for a Magistrate to record special reasons before the expiry of six months and it is only after expiry of six months that the proceedings can be continued but for special reasons to be recorded in writing. Since the case at hand, the learned SDM, for special reasons, recorded in writing, has chosen to proceed with the inquiry and which otherwise are not assailed, as stated, I find that this petition is devoid of merit and consequently the same is hereby dismissed.

N. A. BRITTO, J.

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